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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 900

ESTATE OF EMMA EARLE, G. HAROLD EARLE AND STEWART E. EARLE, FORMER EXECUTORS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (R. 17–34) is reported at 5 T. C. 991. The *per curiam* opinion of the court below (R. 88–90) is reported at 157 F. 2d 501.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 23, 1946 (R. 87). The petition for a writ of certiorari was filed on January 17, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the decedent had a vested interest in one-third of the income of a trust created by the will of her husband, so as to make one-third of the undistributed income thereof includible in her gross estate under the provisions of Section 811 (a) of the Internal Revenue Code.

2. Whether the local Probate Court, in which the estate of the husband was administered, has passed upon the extent of the interest of the decedent under her husband's will, so as to make the orders of the Probate Court binding in this case for tax purposes.

STATUTE INVOLVED

Internal Revenue Code:

> SEC. 811. GROSS ESTATE.
>
> The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—
>
> (a) *Decedent's Interest.*—To the extent of the interest therein of the decedent at the time of his death;
>
> * * * * *

(26 U S. C. 811.)

STATEMENT

This proceeding involves a deficiency in estate tax determined by the Commissioner in the

amount of $55,606.06 (R. 9–15) against the estate of Emma Earle, deceased.[1]

The facts found by the Tax Court (R. 19–25), from the testimony (R. 41–57) and certain exhibits (R. 57–83) adduced before it, may, insofar as material to the issues remaining in this case, be summarized as follows:

G. Harold Earle and Stewart E. Earle are the sons and only children of Emma Earle and George W. Earle, both deceased. Emma Earle died November 1, 1940, leaving a will under which her sons, as executors, after payment of debts, expenses, etc., distributed her estate to themselves as residuary beneficiaries. (R. 19.)

George W. Earle died on October 10, 1923. In his will (R. 57–60), which was subsequently probated in a probate court in Michigan, he provided that, after the payment of his debts and expenses, all of his estate should go to his two sons and one Charles M. Case, as trustees, in trust until the death of his wife, at which time

[1] Fiduciary and transferee liabilities therefor were determined against G. Harold Earle and Stewart E. Earle, former executors and residuary beneficiaries of her estate, which asserted liabilities were the subject of four other separate proceedings before the Tax Court and in the court below, in which G. Harold Earle and Stewart E. Earle admitted their liability either as fiduciaries or transferees, or both, for any taxes due from the estate of Emma Earle (R. 19, 36). Separate petitions for writs of certiorari have been filed in this Court in those cases, Nos. 901, 902, 903, and 904, this Term, and the parties have stipulated therein that no further action should be taken pending the outcome of this case.

the trust was to be closed and the trust property divided equally between his sons (R. 19–21). The will further provided as follows (R. 21):

> I further direct that the income accruing to said trust estate shall be distributed at such times and in such amounts as said trustees shall deem best; said income to be paid to my wife, Emma Earle, one-third, to G. Harold Earle, his heirs, executors or administrators, one-third, and to Stewart Earle, his heirs, executors or administrators, one-third.

The two sons were appointed executors and served as such until the administration of the estate of George W. Earle was concluded on August 16, 1926, at which time they were discharged as executors and the residue of the estate was transferred to them and to Case, as trustees of the testamentary trust (R. 21–22).[2]

The estate (during administration) had income totalling $278,207.28, and made distributions to Emma Earle aggregating $21,554.81, while the trust had income totalling $807,159.52, and made distributions to Emma Earle aggregating $87,089.78 (R. 22).

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[2] The trust continued until after the death of Emma Earle, when the trust property was turned over to the sons, one-half each, and the trustees were discharged by order of the Probate Court in 1941 (R. 76–83). One Chris H. Gribble has been substituted as trustee for Case, who had died (R. 22).

The trustees accumulated a large part of the income of the trust, believing that the will granted them discretion not to distribute it all and that they were carrying out the testator's intent. They reinvested the accumulated income, and they were never criticized for their acts. Whenever cash distributions were made to Emma Earle, like amounts were distributed to G. Harold and Stewart E. Earle. (R. 22–23.)

Emma Earle owned a large home, in which she lived until her death, received interest on her savings bank account and dividends on certain stock she owned, and by the time of her death had accumulated over $92,000 in savings. After 1935, Stewart Earle asked his mother whether she wanted any more money distributed to her and she said on several occasions that she did not. The money she had already accumulated was a responsibility and a concern to her, and she did not want the burden to increase. She did not, however, file with the trustees any written waiver of her interest under the trust, and she made no oral statement that she waived any rights. (R. 23–24.)

The Commissioner determined that one-third of the undistributed income of the George W. Earle estate and trust, was includible in the gross estate of the decedent, Emma Earle (R. 9–15).[3]

[3] The Commissioner's determination also involved other items, not here material.

The Tax Court held, sustaining the Commissioner, that one-third of the undistributed income of the George W. Earle estate and trust was includible in the gross estate of decedent Emma Earle, and accordingly entered its decision that there is a deficiency in estate tax of $48,322.28.[4]

The court below affirmed, in a *per curiam* opinion (R. 88–90).

ARGUMENT

1. The court below correctly affirmed the decision of the Tax Court holding that the Commissioner had properly included in the gross estate of decedent Emma Earle one-third of the undistributed income of the George W. Earle estate and trust.

From the terms of the will of George W. Earle, the Tax Court had correctly concluded—for the reasons well stated in its opinion (R. 26–28)—that, while the testator intended to give the trustees discretion as to the time and amounts of the distributions of income they were to make, he intended that all of the income was to be distributed and that the trustees were not to have any discretionary power to accumulate. The Tax Court further concluded that, even if resort to extrinsic evidence as to the testator's intent was warranted because of some ambiguity in the

[4] The Tax Court reduced the deficiency from the amount of $55,606.06 determined by the Commissioner (9–15) as a result of adjustments made which are not here material.

language of the will, there was nothing in such extrinsic evidence indicating an intent that the trustees were to have discretion to distribute less than all of the income (R. 28). From all of the evidence before it, the Tax Court concluded that it was the testator's intent that his wife Emma Earle should have a vested right to one-third of the income of the trust (R. 29), and that conclusion, which is clearly one of fact,[5] was binding on review unless unsupported by any substantial evidence. *Colorado Bank* v. *Commissioner*, 305 U. S. 23; *Helvering* v. *Rankin*, 295 U. S. 123. The Tax Court's conclusion that the decedent was entitled to one-third of the income absolutely is sound and correct, we submit, and was properly affirmed by the court below. See *Filley* v. *Commissioner*, 45 B. T. A. 826; *Bedford* v. *Commissioner*, 2 T. C. 1189, affirmed, 150 F. 2d 341 (C. C. A. 2d). Cf. *Doty* v. *Commissioner*, 148 F. 2d 503 (C. C. A. 1st).

The court below also properly refrained from disturbing the Tax Court's holding against the

[5] Although not separately set out as findings of fact, conclusions of fact made by the Tax Court in the course of its opinion have the full force and effect of findings of fact. *Flynn* v. *Commissioner*, 77 F. 2d 180 (C. C. A. 5th); *Keok Inv. Co.* v. *Commissioner*, 77 F. 2d 244 (C. C. A. 9th), certiorari denied, 296 U. S. 633; *Insurance & Title Guarantee Co.* v. *Commissioner*, 36 F. 2d 842 (C. C. A. 2d), certiorari denied, 281 U. S. 748; *Olson* v. *Commissioner*, 67 F. 2d 726 (C. C. A. 7th), certiorari denied, 292 U. S. 637; *American Box Shook Exp. Ass'n* v. *Commissioner*, 156 F. 2d 629 (C. C. A. 9th).

contention that the income of the estate of George W. Earle during the period of administration should not be taken into account in arriving at the amount of undistributed income includible in the decedent's estate (R. 30–31). In this connection, the Tax Court properly recognized (R. 30) that, in keeping with the general rule in trust law, the law of Michigan (which is applicable here) is that, except as otherwise provided by the terms of the will, where the will creates a trust the income of which is payable to a beneficiary for life or for a designated period, that beneficiary is entitled to receive the income from the date of death of the testator, as squarely decided in *Detroit Trust Co.* v. *Detroit Trust Co.*, 258 Mich. 386. See also *Poole* v. *Union Trust Co.*, 191 Mich. 162, and Restatement, Trusts, Sec. 234, Michigan Annotations.

2. A review of the decision below is sought here apparently on the theory that the Probate Court in Michigan, where the estate of George W. Earle was administered, had decided that the decedent Emma Earle did not have any interest in the income of the estate during the period of administration or in the undistributed income of the trust, and that such decision should be binding for federal estate tax purposes. The court below conceded (R. 89) that if the question of the interest of Emma Earle in the income had been considered and adjudicated by the Probate Court,

the order of the Probate Court would be binding in this case under the decisions in *Blair* v. *Commissioner,* 300 U. S. 5; and *Sharp* v. *Commissioner,* 303 U. S. 624. See also *Uterhart* v. *United States,* 240 U. S. 598; *Freuler* v. *Helvering,* 291 U. S. 35; *Helvering* v. *Stuart,* 317 U. S. 154; and *Helvering* v. *Rhodes' Estate,* 117 F. 2d 509 (C. C. A. 8th). But the court below correctly pointed out (R. 89) that if the Probate Court did not pass upon that question, then its decision is not controlling in the instant case, citing *Commissioner* v. *Childs' Estate,* 147 F. 2d 368 (C. C. A. 3d). Concluding that the record in this case does not show that the issue of the extent of the interest of Emma Earle under her husband's will was considered by the Probate Court,* the court below therefore affirmed the decision of the Tax Court that one-third of the undistributed

* Amongst other things, the court below rested its conclusion upon the fact that the orders of the Probate Court relied upon by the petitioner (R. 68–75, 76–82) were "perfunctory administrative orders," in a form not in all respects applicable to the facts, and showing upon their face that Emma Earle's interest was not considered (R. 90). That view of the orders is clearly supported by the recitals contained in them, to the effect that allowances "for the support of the children under seven years" (R. 69) or "for the support of the children under ten years of age" (R. 77) have been paid, which recitals are clearly formalistic and not applicable to the estate in question, since the only two children of George W. Earle (R. 19) are Stewart Earle, who was 28 years old in 1923 (R. 48), and Harold Earle, who is older than Stewart (R. 51).

income of the George W. Earle estate and trust was includible in the decedent's gross estate (R. 89–90). The decision of the court below on this point is in keeping with *Commissioner* v. *Childs' Estate, supra,* where it had been held that the adjudication by a state court is binding for federal tax purposes "only where such court has heard and determined the matter in question upon the merits" (147 F. 2d 370). See also *First-Mechanics Nat. Bank* v. *Commissioner,* 117 F. 2d 127 (C. C. A. 3d).

The decision below on this point and the decision in *Commissioner* v. *Childs' Estate, supra,* are not in conflict, as alleged (Pet. 6–7), with *Henricksen* v. *Baker-Boyer Nat. Bank,* 139 F. 2d 877 (C. C. A. 9th); *Frederich* v. *Commissioner,* 145 F. 2d 796 (C. C. A. 5th); or *Eisenmenger* v. *Commissioner,* 145 F. 2d 103 (C. C. A. 8th). In the *Henricksen* case, the specific question there material as to the wife's right to invade the corpus of the estate had been considered and passed upon by the state court, and that decision was therefore held to be controlling for tax purposes. Similarly, in the *Frederich* case the question there material, as to whether the administration of an estate should be kept open, had been considered and passed on by the state court (cf. dissenting opinion, 145 F. 2d 800). Likewise, in the *Eisenmenger* case, the specific question as to the rights of the beneficiary under the par-

ticular trust had been considered and decided by the state court.

3. Neither is there any conflict, as alleged (Pet. 8), between the decision below, which sustained the Tax Court's conclusion that the income of the George W. Earle estate during the period of administration should be taken into account in arriving at the amount of undistributed income includible in the gross estate of the decedent, and *Weigel* v. *Commissioner,* 96 F. 2d 387 (C. C. A. 7th). That case involved an entirely different question, namely, whether an estate was subject to an income tax upon certain income it realized during the period of administration, or whether it was entitled to a deduction therefor on the ground that the amount of income in question was distributed during the taxable year to the residuary legatee within the terms of Section 162 (c) of the Revenue Act of 1928. The language quoted by the petitioner from the opinion in this case (Pet. 8) had reference to distributions to trustees of testamentary trusts and not to the rights of legatees such as Mrs. Earle, and the court recognized that a different rule was applicable to the latter. See also *supra,* pp. 7–8.

4. Finally, there is no merit to the contention (Pet. 7) that the holding of the court below (R. 89), to the effect that "the interest of a decedent under a will may be liable for an estate tax even though the property has never been received", is

so broad in scope as to warrant review by this Court. Under the facts of this case, that statement is sound and correct, insofar as applied to the case of a decedent who has a vested interest under another's will. See *Sharpe* v. *Commissioner,* 107 F. 2d 13 (C. C. A. 3d), certiorari denied, 309 U. S. 665. Clearly, no occasion for review by this Court is presented on this point.

CONCLUSION

The decision below is correct. It turns upon the particular facts of the case and presents no question calling for review by this Court. There is no conflict of decisions. The petition should therefore be denied.

Respectfully submitted.

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FEBRUARY 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947